



OFFICE OF PUBLIC INSTRUCTION

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Linda McCulloch
Superintendent

December 23, 2005

[Complainant]

[District]

<p>THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION</p>

RE: **FINAL REPORT** – In the Matter of ***, 2005-02, Alleged Violations of the Individuals With Disabilities Education Act (IDEA).

Dear **** and Superintendent ****:

This is the final report pertaining to the above-referenced special education compliance complaint (the Complaint) compiled and submitted pursuant to the Admin. R. Mont. 10.16.3662. **** (the Complainant) alleges that the **** (the District) violated the Complainant's child's, *** (the Student's), Individual Education Program (IEP) regarding the provision of physical therapy services. In particular, the complaint alleges that the District violated the Student's IEP by failing to provide physical therapy during the maternity leave of the District's physical therapist

A. Procedural History.

1. The Complaint. On November 15th, 2005 the Montana Office of Public Instruction ("OPI") received a Complaint signed by the Complainant and dated November 7th, 2005. The District was notified of the filing of the Complaint by letter dated November 16th 2005.
2. Early Assistance Program. The OPI's Early Assistants Program attempted to resolve the controversy pursuant to Admin. R. Mont. 10.6.16.3660. The director of the Early Assistance Program, Tim Harris, concluded resolution was not possible.
3. District's Written Response. On December 7, 2005, the parties were notified that the Early Assistance Program was unable to resolve the dispute. The District's Written Response was due on December 15, 2005. The District's Written Response was received on December 8, 2005.

"It is the mission of the Office of Public Instruction to improve teaching and learning through communication, collaboration, advocacy, and accountability to those we serve."

4. Complainant's Reply. The Complainant's Reply was received on December 15, 2005.

The findings and conclusions contained in the Final Report are based on the Complaint, the District's Written Response, the Complainant's reply and interviews with the following individuals: *** Superintendent,****; *** Elementary Principal, ****; **** Special Education Cooperative Director,****; **** Special Education Physical Therapist, ****; STEP program Director, ****; STEP Case Worker ****; and the parents, *** and ***. A telephone interview was conducted with the Director of the **** Special Education Cooperative, ****, who is the hiring agent for physical therapy services provided to the **** Special Education Cooperative. Both federal and state laws require that all relevant information be reviewed and an independent determination made as to whether the District violated IDEA, 34 CFR 300.661 (a) (3) and Admin. R. Mont. 10.16. 3662 (8).

As part of the investigation hereunder, the OPI engaged the services of Pat Boyer to review certain materials and interview the parties.

B. Legal Framework

Federal and state law requires that students with disabilities receive FAPE 20 U.S.C. 1400-1487, Mont. Code Ann. 20-7-401, Et seq. In general, FAPE means special education and related services that conform to the student's individualized education program. Special education, in turn, means specifically designed instruction, at no cost to the parent, to meet the unique needs of the disabled child. The United States Supreme Court has interpreted IDEA to mean that "the basic floor of opportunity provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child". *Hendrick Hudson Dist. Bd. Of Ed. V. Rowley*, 458 U.S. 176, 202 (1982). The Supreme Court has not read IDEA to mean that a disabled child be provided with the best available special education or services or that the services maximize each child's potential. Therefore, under IDEA, the District must provide the "basic floor of opportunity" for the Student's education. Particular regulations promulgated to implement IDEA are referenced below.

C. Findings and Conclusions

1. The Student is a 3 year old female attending the **** Special Education preschool program. She was identified as a student with Developmental Disabilities through the Child Study Team (CST) process. This is the Student's first IEP which was completed on November 3, 2005.
2. The first IEP meeting was held on September 16, 2005. The IEP was completed on November 3, 2005. The District's representatives and the parents disagree as to how many IEP meetings took place to finalize the IEP. The IEP form indicates that the duration of the IEP is September 16, 2005 to September 16, 2006. On page 2 (fourth page of goals and objectives) under Present Levels of Academic Achievement and Functional Performance, Measurable Annual Goals and Benchmarks or Short-Term Objectives the

Team indicated a need for physical therapy and developed four goals. Under Special Education and Related Services the Team specified 30 minutes of physical therapy per week.

D. Allegations and Disposition

The complaint contains essentially one substantive allegation, which is addressed below.

1. Allegation: The District Violated the Student's IEP by denying access to physical therapy during the absence of the physical therapist during maternity leave.

34 CFR 300 Sec 300.1 (a) General. Specifies that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and,

- (b) To ensure that the rights of children with disabilities and their parents are protected.

Sec 300.24 Related Services

(a) **General.** As used in this part, the term Related Services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with disabilities to benefit from special education, and includes speech-language pathology, and audiology services, psychological services, physical and occupational therapy, recreation, including recreation therapy, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools and parent counseling and training.

- (b) Physical Therapy means services provided by a qualified physical therapist.

Based on the information gathered during the investigation, the District denied [the student] related services as specified in her IEP. The Pennsylvania Commonwealth Court #33 stated: "When a district structures a program that it believes to be adequate and for the benefit of the student, it simply cannot negate its requirements by somehow assuming that the child was not injured by its failure to implement the program". *Central Bucks Sch. Dist. v. Sara K. by Mr. and Mrs. K.*, 34 IDELR ¶ 235 (Pa. Commw. Ct. 11/9/00)

E. Order

Based on the information gathered during the investigation it is determined that the District did not provide physical therapy services as specified in the IEP. Therefore, the District is in violation of implementing the IEP as written. The District shall reimburse the complainant

for the cost of PT services provided to [the student] during the maternity leave of the District's physical therapist.

Sincerely,

Cathy Warhank, Compliance Officer
Chief Legal Counsel